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|  |   |                             |
|--|---|-----------------------------|
| In re Application of:                        | : |                             |
| KIBBLEWHITE, Ian, E., et al.                 | : | DECISION ON PETITION        |
| U.S. Application No.: 10/528,515             | : | UNDER 37 CFR 1.78(a)(3) AND |
| PCT No.: PCT/US2003/029302                   | : | UNDER 37 CFR (a)(6)         |
| International Filing Date: 19 September 2003 | : |                             |
| Priority Date: 19 September 2002             | : |                             |
| Atty Docket No.: LOAD2 US                    | : |                             |
| For: THREAD FORMING FASTENERS                | : |                             |
| FOR ULTRASONIC LOAD                          | : |                             |
| MEASUREMENT AND CONTROL                      | : |                             |

This is a decision on the "Petition Under 37 CFR 1.78(a)(3)" filed 31 October 2005, treated herein under 37 CFR 1.78(a)(3) and (a)(6). The petition seeks acceptance of an unintentionally delayed claim under 35 U.S.C. §§ 120, 365(c), and 119(e) for the benefit of the prior filed applications set forth in the concurrently filed amendment.

The petitions are **GRANTED**.

The present nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior filed nonprovisional and provisional applications is submitted after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii) and 1.78(a)(5)(ii). Therefore this is a proper petition under 37 CFR 1.78(a)(3) and 1.78(a)(6).

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) and (a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

- (1) the reference to the prior-filed applications, as required by 35 U.S.C. 120 and 119(e) and 37 CFR 1.78(a)(2)(i) and 1.78(a)(5)(i), unless previously submitted;
- (2) the surcharge set forth in 37 CFR 1.17(t);
- (3) A statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional.

The present petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(3) and 1.78(a)(6) in that: (1) a reference to the prior-filed applications has been included in an amendment to the first sentence of the specification following the title, as provided by 37

CFR 1.78(a)(2)(iii) and 1.78(a)(5)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition includes a proper statement of unintentional delay. Accordingly, having found that the petition for acceptance of the unintentionally delayed claim for the benefit of priority under 35 U.S.C. 120 and 119(e) to the prior filed applications satisfies the conditions of 37 CFR 1.78(a)(3) and 1.78(a)(6), the petition is granted.

*The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(3) and 1.78(a)(6) should not be construed as meaning that this application is entitled to the benefit of the filing date of the prior-filed applications. In order for this application to be entitled to the benefit of the prior filed applications, all other requirements under 35 U.S.C. 120 and 365(c) and 37 CFR 1.78(a)(1) and (a)(2) and under 35 U.S.C. 119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the Filing Receipt will include the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether this application is entitled to the benefit of the earlier filing date.*

Any questions concerning this matter may be directed to Richard M. Ross at (571) 272-3296.

This application is being forwarded to the National Stage Processing Branch of the Office Of PCT Operations for further processing in accordance with this decision, including the processing of applicant's response to the Notification Of Missing Requirements filed 26 October 2005 and for updating USPTO records to include the prior-filed applications referred to in the present petition.



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